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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,426

05/16/2006

Werner Lubitz

2923-746

8425

6449

7590

07/09/2008

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

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WASHINGTON, DC 20005

EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

NOTIFICATION DATE

DELIVERY MODE

07/09/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/567,426	<b>Applicant(s)</b> LUBITZ, WERNER	
	<b>Examiner</b> Rodney P. Swartz, Ph.D.	<b>Art Unit</b> 1645	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-12, 14-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, 14-18 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicant's Response to Office Action, received 28 February 2008, is acknowledged.

Claim 1 has been amended. Claim 6 has been canceled. New claim 20 has been added.

2. Claims 1-5, 7-12, 14-18, and 20 are pending and under consideration.

### **Rejections Moot or Withdrawn**

3. The rejection of claim 6 under 35 U.S.C. 112, second paragraph, is moot in light of the cancelation of the claim.

### **Rejections Maintained**

4. The rejection of claims 1-5, 7-12 and 14-18 under 35 U.S.C. 112, second paragraph, is maintained.

Applicant argues that the amendment of the claim obviates the rejection.

The examiner has considered applicant's argument in light of the amendment, but does not find it persuasive. As newly amended, the claims are now drawn to a method for preparing bacterial ghosts, comprising bringing bacterial ghosts into contact with carrier materials wherein the closure is mediated by way of specific interactions between the partners of a bioaffinity binding pair, which partners are anchored on the ghosts and the carrier materials.

The claims remain unclear because there is no restriction on which partner of the bioaffinity binding pair is anchored on the ghost and the carrier material. Thus, if both partners are on both the ghost and the carrier materials, it is unclear how the ghosts are closed. In addition, it is unclear how one closes the ghost if one partner is anchored on the ghost membrane and the other partner is anchored on the carrier material. This appears to only result in the membrane being bound to the carrier in an unclosed manner.

### **New Rejection Necessitated by Amendment**

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Newly added claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is drawn to a method for preparing closed bacterial ghosts under conditions which closure of the bacterial ghosts takes place, characterized in that the closure is mediated by way of specific interactions between partners of a bioaffinity binding pair, which partners are anchored on the ghosts and the carrier materials and present in free form with at least one partner immobilized on the membrane of the ghosts and the carrier material and at least one second partner present in free form and the closure takes place by way of a P1-P2-P1 interactions.

It is unclear how one obtains the claimed closed ghosts under the embodiments wherein all of the partners are in free form, all partners are immobilized on the membrane and all partners are immobilized on the carrier materials. The interactions between the binding partners would appear to result in the ghosts binding to the carrier in the unclosed manner, or the free form binding partners binding without any closure of the ghosts due to binding of P1-P2 of free forms, or P1-P2 binding of free form with the partner on the carrier material.

### **Conclusion**

6. No claims are allowed.

Art Unit: 1645

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Shannon Foley, can be reached on (571)272-0898.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

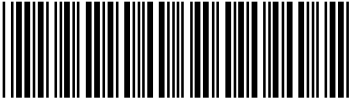
Art Unit: 1645

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

July 5, 2008

<div>Application Number</div> <div></div>	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/567,426	LUBITZ, WERNER	
	Examiner	Art Unit	
	Rodney P. Swartz, Ph.D.	1645	